

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2013-419619-002 DT

06/06/2016

HON. TERESA SANDERS

CLERK OF THE COURT
S. Radwanski
Deputy

STATE OF ARIZONA

MARY-ELLEN WALTER

v.

DARNELL MOSES ALVAREZ (002)

MICHAEL ZIEMBA
ANNA M UNTERBERGER

CAPITAL CASE MANAGER

RULING

The Court has read and considered defendant's *Motion and Order for Deposition of Witness Davieanna Blake for Phase One and Motion for ExParte Interview for Phase Three of Defendant's Trial*, the State's response, the response of Davieanna Blake, the defendant's reply to each response, and the defendant's *Motion to Strike* the State's response.

In his motion, the defendant seeks an order from the Court allowing him to depose co-defendant Davieanna Blake regarding Phase One of the defendant's trial, and to interview her on an *ex-parte* basis in preparation for a possible penalty phase trial.

The defendant is charged with one count of Murder in the First Degree, and two counts of Child Abuse stemming from the death of his two-year old son on May 1, 2013. The State has filed a *Notice of Intent to Seek the Death Penalty*. Davieanna Blake is the mother of the child, and a co-defendant charged with the same crimes as the defendant. The defendants have been severed for trial purposes, and the State is not seeking the death penalty with regard to Ms. Blake. Ms. Blake is pending a trial date after the defendant's trial date, and no settlement has been reached with regard to her matter at this time. Ms. Blake, through counsel, objects to the defendant's motion, citing her Fifth Amendment privilege.

In his motion, the defendant asserts that his purpose in deposing the co-defendant is not to "ask questions about the incident itself", but to gather information to possibly support a

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defense that the child's uncle, Darren Richmond, caused the injuries that killed the child. Mr. Richmond has not been charged with any crimes related to the death of the child. It is evident from the pleadings that it is the defendant's purpose to question Ms. Blake about her knowledge of the child's death and who may be responsible for it.

A defendant has a right to compel the attendance of witnesses whose testimony is material and favorable to the defense. *State v. McDaniel*, 136 Ariz. 188, 665 P.2d 70 (1983). This right is not absolute and does not include the right to compel a witness to waive his Fifth Amendment privilege. *State v. Mills*, 196 Ariz. 269 (1999). If the witness validly asserts his Fifth Amendment privilege by showing a reasonable ground to apprehend danger to the witness from his being compelled to answer, the defendant's right to compulsory process must yield to the witness's privilege not to incriminate himself. *Mills*, *State v. Fisher*, 141 Ariz. 227, 686 P.2d 750 (1984).

Ms. Blake is a co-defendant of the defendant, charged in the same indictment with the same charges. Her matter has not proceeded to trial, and she has not been afforded any promises of immunity for any statements she may make in connection with this matter. Given these circumstances, she clearly has a Fifth Amendment privilege to not make any statements regarding her knowledge of the circumstances leading up to the child's death, or how it was caused. She has unequivocally, through counsel, exercised this privilege.

IT IS ORDERED denying the defendant's motion.